



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

August 4, 2014

Public Comment  
Trash Amendments  
Deadline: 8/5/14 by 12:00 noon



Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, California 95814

Re: Draft Amendments to the State Water Quality Control Plans to Control Trash

Dear Ms. Townsend:

Thank you for the opportunity to review and comment on the Draft Amendments to the State Water Quality Control Plans to Control Trash ("draft Trash Control Amendments" or "TCAs"). The State of California will provide groundbreaking national and global leadership with this statewide approach to reduce the impacts of trash on the state's waters. Furthermore, since it has been estimated that 80% of all marine debris is derived from land-based sources, California's efforts to reduce trash entering its waterways provide an important mechanism to address the growing risks posed by marine debris to human health and the environment.

EPA has long supported the State taking action to reduce trash in waterways. Trash not only makes our waterways look dirty and unsightly, but also can pose serious human health risks and endanger wildlife. Furthermore, litter-filled waters hurt local economies by discouraging fishing, boating, and other recreational activities and burdening taxpayers. To effectively address this problem, it's important to prevent trash from entering waters. We have supported the development of trash Total Maximum Daily Loads (TMDLs) and the inclusion of trash limitations in the Los Angeles and San Francisco Bay Municipal Separate Storm Sewer System (MS4) permits. We provided funding for key activities such as the installation of full-capture devices in San Francisco Bay communities, and innovative projects to increase public awareness and to implement source reduction, including trying to address the unique challenges posed by homeless encampments. Furthermore, we have provided the State Water Resources Control Board with resources to initiate the development of statewide trash policy as a more efficient and effective approach than developing individual TMDLs for each trash impaired water body.

At EPA Region 9 we are implementing a marine debris strategy which encompasses waste minimization, trash reductions from stormwater discharges and further assessment of marine debris characteristics. In particular, EPA is concerned about microplastics distributing toxic substances throughout aquatic ecosystems via the food web. Recognizing that a source of microplastics is the breakdown of larger plastic items, we believe that the TCAs' prohibition of the discharge of plastic items to State waters is an important step in the reduction of microplastics.

EPA agrees with the proposal to base these trash controls primarily on California's regulatory mechanisms under the Clean Water Act and Porter-Cologne Water Quality Control Act. We also recognize that these regulatory approaches may encourage utilization of broader source reduction strategies to cost-effectively control trash.

Implementation of the TCAs may be leveraged by coordinating with CalRecycle's goal to reduce solid waste by 75% by 2020. One of the ways CalRecycle intends to reach this goal is through source reduction.

We look forward to supporting California's continued success in reducing the risks associated with trash that enters our waterways and participating in various partnerships such as the West Coast Governors' Alliance for Ocean Health to foster broad-based solutions to this problem.

Our specific comments and recommendations on the draft TCAs, which do not represent determinations by EPA under Clean Water Act sections 303 (c), 303 (d), or 402, are summarized in the following attachment. We look forward to engaging in further discussions with the State regarding aspects of the TCAs before they are submitted for EPA's approval as a new water quality objective. If you have any questions, please contact Molly Martin of our Watersheds Office at 415-972-3403.

Sincerely,

A handwritten signature in black ink, appearing to read "John Kemmerer", with a long horizontal flourish extending to the right.

John Kemmerer, Associate Director  
Water Division

Attachment

## **Attachment – EPA Comments on Draft Amendments to the State Water Quality Control Plans to Control Trash**

### ***EPA APPROVAL PURSUANT TO THE CWA***

As noted in the draft Staff Report, the Trash Control Amendments (TCAs) are a new water quality objective which will require EPA approval. EPA will make appropriate approval/disapproval decisions following the State Board's submittal of the TCAs to EPA for approval. The comments and recommendations described below do not constitute determinations by EPA under Clean Water Act sections 303 (c), 303 (d), or 402. We would like to engage in further discussions with the State regarding aspects of the TCAs before they are submitted for approval.

### ***MONITORING, ADAPTIVE MANAGEMENT & ATTAINING OBJECTIVES***

Given that the TCAs focus heavily on implementation via NPDES permits, monitoring performance of NPDES controls will be crucial to determine if permittee efforts to control trash attain the water quality objective. EPA recommends that the TCAs explicitly call for adaptive management based on monitoring the effectiveness of controls and modifying control strategies as necessary to attain the water quality objective.

#### ***RECEIVING WATER MONITORING***

To facilitate adaptive management, EPA recommends that Track 1 for MS4 permittees be revised to include receiving water monitoring (whether the amount of trash in the receiving water has decreased from the previous year), as is contemplated for Track 2. To determine whether trash controls are meeting the objective that "trash shall not accumulate in ocean waters, along shorelines or adjacent areas in amounts that adversely affect beneficial uses or cause nuisance," it is critical to know the condition of receiving waters.

EPA recommends that receiving water monitoring pursuant to both Track 1 and Track 2 focus both on the volume of trash and the type of trash present, to allow for adaptive management, including potential development of source control strategies.

#### ***MONITORING PLANS & DATA***

As currently drafted, the TCAs require that MS4 permittees electing to comply under Track 2 submit an implementation plan, which presumably will trigger the preparation of a monitoring plan pursuant to the relevant MS4 permit. EPA recommends that the Monitoring and Reporting provisions of the TCAs explicitly require that permittees complying via both Track 1 and Track 2, and Caltrans, submit a monitoring plan for review and approval, including an opportunity for public review. To conserve staff resources, a provision could be included for the plans and reports to be deemed approved if the permitting authority doesn't provide comments within a defined timeframe (e.g. 60 or 90 days). EPA recommends that the TCAs include specific expectations for the monitoring plans as included for the monitoring reports, such as the type of data to be collected (i.e. volume, type, etc.) to ensure entities in same area complying under Track 1 and 2 will collect complementary data. Additionally, EPA recommends that the state should specify how data will be compiled and stored to provide consistency across Regional Boards.

### ***PRIORITY AREA DEFINITIONS***

We appreciate that a goal of the TCAs is to focus trash controls on areas that will produce the largest benefit and promote the most efficient use of limited resources. As drafted the TCAs will focus on "priority land uses" subject to controls by MS4 permittees and "significant trash generating areas" subject to controls by Caltrans. We recognize that developing these priority area definitions to ensure coverage of high trash generating areas is

very challenging, and that definitions may need to change over time to reflect receiving water monitoring results and adaptive management. To ensure all areas generating high volumes of trash are included, an alternative to the land use approach could be to use results of baseline trash loading surveys conducted by MS4 permittees. The controls required by the TCAs for MS4s and Caltrans could thus be revised to cover areas that have been found to generate high volumes of trash in these surveys. Alternatively, the definitions in the TCAs could be revised to be more inclusive of areas likely to generate high volumes of trash. The following summarizes our concerns and suggestions about the draft TCAs priority area definitions.

The first of the priority land use definitions, high-density residential, is defined as all land uses with at least 10 developed dwellings/acre. This would generally exclude a residential neighborhood made up of solely single family homes. A residential neighborhood of single family homes may generate a high volume of trash, especially if there is a commercial district or a bus stop in the nearby vicinity.

The definitions of Industrial and Commercial land uses stipulate that the “primary” activities on developed parcels must be commercial or industrial. The implication is that the majority of the land must be commercial or industrial in order to trigger MS4 trash controls. The presence of a high trash generating commercial or industrial activity should trigger trash controls regardless of whether such activity is the primary land use in a given area.

Similarly, the use of the term “predominate” in the Mixed Urban definition implies that the listed land uses must make up the majority of the area under consideration. If the mixed uses present generate high volumes of trash, that area should be subject to controls, regardless of whether or not these uses make up a majority of the land area.

Further, commercial and industrial enterprises which generate trash, as well as public transportation stations, have trash impacts beyond the immediate areas in which these land uses are located. Trash controls should be implemented in areas (including low and medium density residential areas) which are located adjacent or in close proximity to commercial or industrial activities that result in trash generation, and in areas adjacent or in close proximity to public transportation stations.

Concerns with land use definitions also apply to the “significant trash generating areas” under the jurisdiction of Caltrans. Caltrans must address highway on- and off-ramps located “in high density residential, commercial and industrial land uses.” EPA recommends that in order to cover high trash generating areas, Caltrans should implement controls if land uses which generate trash are present adjacent or in close proximity to on/off-ramps.

We support that the TCAs provide discretion to permitting authorities to add high trash generating areas that do not meet the “priority land use” definition within MS4 permits or the “significant trash generating areas” definition for Caltrans permit. EPA recommends that the TCAs be revised to also provide the opportunity for members of the public to request to the regional permitting authority that specific land uses or locations be added for trash control coverage under permits issued to MS4s and Caltrans.

### ***NON POINT SOURCE CONTROLS***

The TCAs indicate that the mechanisms for requiring compliance with the prohibition of trash discharges include Waste Discharge Requirements (WDRs) and Waivers of WDRs. The TCAs’ details focus on NPDES permits and are less explicit about expectations for implementation in areas covered by WDR and Waivers of WDRs. We recommend the TCAs specifically reference the “Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program” and provide clearer direction for how compliance in these areas will be achieved. For example, we suggest considering more explicit requirements to identify and address sources of trash that are not subject to NPDES permits. Priorities for non-permitted high trash areas (e.g., beaches) could

also be identified in the updated Nonpoint Source Management Plan currently being developed by the State. As noted in a previous comment, EPA recommends the use of adaptive management based on findings on the effectiveness of NPDES controls, including the results of receiving water monitoring. As monitoring identifies trash in receiving waters, MS4 permittees may identify sources of trash that are not under their jurisdiction which could be addressed by WDRs and waivers of WDRs.

### ***INDUSTRIAL GENERAL PERMITS AND CONSTRUCTION GENERAL PERMITS***

We strongly support the TCAs prohibition of preproduction plastic, and are aware that this prohibition complements controls on preproduction plastics in the State's NPDES permit for discharges of stormwater associated with industrial activities (Industrial General Permit or IGP). We suggest that the TCAs specify the regulatory vehicle(s) to be used to ensure compliance with the prohibition of preproduction plastic not covered by the IGP. We urge the State to utilize all available tools to ensure that industries that use or transport preproduction plastics are addressed in a holistic manner that prevents the discharge of these materials. Additionally, the TCAs could be expanded to provide for increased coordination among industries and MS4 permittees to identify preproduction plastic users which are lacking required permits.

EPA recommends specifying any expectations for new or revised language in the existing IGP or construction general permit (CGP), or new requirements on industrial/construction facilities which are already required to control trash.

In the context of industrial permits, the TCAs refers to an "outright prohibition" of trash discharges. It's unclear whether there is a difference between an "outright prohibition" and a "prohibition." We recommend that the TCAs clarify what is meant by the language referring to facilities' "inability to comply with the outright prohibition."

EPA recommends the policy be more specific for termination of permit coverage related to the IGP and CGP:

"Termination of permit coverage for industrial and construction storm water dischargers shall be conditioned upon the proper operation and maintenance of all controls."

There are various circumstances under which construction or industrial permit coverage may be terminated, and the policy may need different requirements depending on the circumstances. For construction facilities, the language appears to indicate a requirement for post-construction controls for trash collection be installed and maintained. If this is the case, the policy should provide additional detail on the specifics and permitting mechanisms for ensuring compliance. For industrial facilities, the TCAs could state that all trash must be properly disposed of and the site secured before coverage may be terminated.

### ***EXISTING TOTAL MAXIMUM DAILY LOADS & FUTURE IMPAIRED WATERS LISTINGS***

We support efforts to create a consistent statewide approach to address trash in a manner more efficient than developing TMDLS for individual water bodies. Upon approval of the TCAs, the State may consider listing trash impaired waters under Category 4b, as implementation of the TCAs will represent pollution control measures required by the State to meet water quality standards. We look forward to working with the State on the categorization of these waters in future Integrated Reports.

As drafted the TCAs only minimally apply within the jurisdiction of the Los Angeles Regional Water Quality Control Board, in recognition of the advanced implementation of trash TMDLs via MS4 permits in the Los Angeles Region. We recognize that in the Los Angeles Region extensive trash control measures are being implemented throughout MS4s, that there has been significant progress implementing these controls, and it's

our view that these required controls should not be modified by the TCAs. However, as noted previously in these comments, we recommend that the TCAs be modified to require receiving water monitoring to determine if the water quality objective is being achieved, and to explicitly call for adaptive management based on the effectiveness of NPDES permits controls, including the identification of trash sources that may or may not be under the jurisdiction of permittees. These recommended modifications to the TCAs apply across the State, including the Los Angeles Region.

For the San Francisco Bay Region, we recommend the State reconsider how the TCAs will impact the implementation of existing trash provisions and compliance schedules, and ensure that coverage under the TCAs is as protective as it would be under the San Francisco Bay Regional Water Quality Control Board's current approach for trash control under its Municipal Regional Permit.

### ***COMPLIANCE SCHEDULES***

We recommend further clarity be provided on the intersection between the time schedules in the TCAs and the State's Compliance Schedule Policy [SB #2008-0025]. We further recommend that the TCAs better describe the requirements, set forth at 40 C.F.R. §122.47, for including a compliance schedule in an NPDES permit, such as justifications for the specific need for and length of the compliance schedule allowed and interim milestones (per annum) for any compliance schedule longer than 1 year.